

COPY

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

—000—

THE MAGNAVOX COMPANY, a corporation  
and SANDERS ASSOCIATES, INC., a  
corporation,

Plaintiffs,

vs.

Civil Action  
No. 74 C 1030

BALLY MANUFACTURING CORPORATION,  
a corporation, CHICAGO DYNAMIC  
INDUSTRIES, INC., a corporation,  
et al.,

Defendants.

DEPOSITION OF NOLAN K. BUSENELL

July 3 1974

SOCRATES NICHOLSON

AND ASSOCIATES  
OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0115

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DEPOSITION OF NOLAN K. BUSHNELL

Page

Examination by Mr. Anderson ..... 3

DEPENDANTS' EXHIBITS

FOR  
IDENT.

1	Notice of Taking Deposition.....	24
2	Group of Documents being Royalty Agree- ments and Affidavits .....	26
3	Copy of United States patent 3,793,483 .....	34
4	Copy of affidavit of John C. Wakefield .....	77

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Defendants.

BE IT REMEMBERED that pursuant to Notice of Taking  
Deposition, and on Wednesday, the 3rd day of July 1974,  
commencing at the hour of 10:00 o'clock a.m. thereof, at the  
law offices of Messrs. FLEHR, ROHBACH, TEST, ALBRITTON &  
HERBERT, 160 Sansome Street, San Francisco, California, before  
me, RUTH E. BENTON, a Notary Public in and for the City and  
County of San Francisco, State of California, personally  
appeared

NOLAN K. BUSHNELL,

called as a witness on behalf of the plaintiffs, who, being  
by me duly sworn to testify the truth, the whole truth and  
nothing but the truth herein, was thereupon examined and  
testified as hereinafter set forth.

-- --

Messrs. THOMAS A. BRIODY AND NEUMAN, WILLIAMS, ANDERSON &

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1 OLSON, by THEODORE W. ANDERSON, Esq., 77 West Washington Street,  
2 Chicago, Illinois 60602, appeared as counsel on behalf of the  
3 plaintiffs.

4 Messrs. FLEHR, HOHEACH, TEST, ALBRITTON & HERBERT, by  
5 THOMAS O. HERBERT, Esq., and BAYLOR G. RIDDELL, Esq., appeared  
6 as counsel on behalf of the defendant ATARI, INC.

7 Messrs. FITCH, EVEN, TABIN & LUEDERKA, by DONALD L. WELSH,  
8 Esq., 135 South LaSalle Street, Chicago, Illinois 60603,  
9 appeared as counsel on behalf of the defendants BALLY MANU-  
10 FACTURING CORPORATION, MIDWAY MANUFACTURING & EMPIRE DISTRI-  
11 BUTION.

12 Observers present: EDWARD S. WRIGHT and JAMES SHOLER.

13  
14 MR. ANDERSON: I understand, Mr. Welsh, you had a state-  
15 ment for the record?

16 MR. WELSH: Yes. The depositions of Bally, Midway and  
17 Empire taken last week in Chicago, there was a claim of confi-  
18 dentiality made with respect to certain documents produced by  
19 Bally and testimony with respect to those documents on behalf  
20 of Bally. I will now withdraw that claim of confidentiality  
21 both with respect to the documents and the testimony.

22 MR. ANDERSON: I think that is quite satisfactory to us of  
23 course and I think it expedites things a good deal.

24 MR. WELSH: I presume you will get that to the reporter?

25 MR. ANDERSON: Yes I will get that to Mr. Shapiro, and  
26 does that vitiate our signed stipulation?

1 MR. WELSH: No I would like to keep that in effect because  
2 there may be other documents such as those that we have agreed  
3 to produce from--

4 MR. ANDERSON: Then the stipulation remains in effect but  
5 there is nothing under it at the moment at all to the best of  
6 my knowledge.

7 MR. WELSH: Right.

8 MR. ANDERSON: That is fine.

9 MR. HERBERT: The removal of the confidentiality is  
10 certainly in accordance with the wishes of Atari.

11 MR. ANDERSON: I think maybe just for the record show the  
12 presence of these two gentlemen.

13 MR. HERBERT: We have two observers here, Edward Wright and  
14 James Sholer.

15 - - -

16 Whereupon,

17 NOLAN K. BUSHNELL,

18 called as a witness on behalf of the plaintiffs, having been  
19 duly sworn by the Notary Public to testify the truth, the whole  
20 truth and nothing but the truth herein, was examined and testi-  
21 fied as follows:

22 EXAMINATION BY MR. ANDERSON:

23 Q. Mr. Bushnell would you please state your full name?

24 A. Nolan K. Bushnell.

25 Q. Where do you reside?

26 A. I reside at 6101  
Almirida, Campbell, California.

1 Q. Is Campbell in the San Jose vicinity?

2 A. Yes it is.

3 Q. By whom are you employed?

A. Atari Incorporated.

4 Q. That is A-t-a-r-i, I-n-c. period?

5 A. That's correct.

6 Q. Where is Atari located?

A. 14600 Winchester

7 Boulevard, Los Gatos, California.

8 Q. Is Los Gatos also in the San Jose vicinity?

9 A. Yes it is.

10 Q. What is your position with Atari, Inc.?

11 A. I am president.

12 Q. Do you hold any other titles or positions?

13 A. I am chairman of the board.

14 Q. Do you hold any other titles or positions?

15 A. No I do not.

16 Q. Do you hold any other titles or positions in any other  
17 corporations?

A. Yes I do.

18 Q. What other corporations?

A. I hold the position of  
19 president of Syzygy Company, S-y-z-y-g-y.

20 Q. And that is Syzygy Company?

A. Yes.

21 Q. Is that a California corporation, do you know?

22 A. It's currently a proprietorship. It's going through  
23 incorporation currently.

24 Q. Has it ever been a corporation?

A. Yes it has  
25 incorporated under the name of Syzygy Game Company. Well,  
26 actually the assets of that corporation were purchased so

1 essentially, you know, the business was not purchased but simply  
2 the assets of that corporation were purchased.

3 Q. The assets of Syzygy Game Company were purchased by the  
4 proprietorship of Syzygy Company? A. Right.

5 Q. Which is now being formed into a corporation?

6 A. Right. We assumed the assets without assuming the liabilities.  
7

8 Q. When you say "we" who do you mean? A. Ted Olson.

9 Q. Ted Olson? A. Yes.

10 Q. O-l-s-o-n? A. Yes.

11 Q. Who else? A. There are a couple of other  
12 people. It's a small little game company which, you know, I  
13 really think is not material to this case.

14 Q. Is it in the video game business? A. It's in the  
15 game operating business, yes.

16 Q. In the video game operating business? A. Yes.

17 Q. Do you hold a controlling interest in Syzygy Company at  
18 the present time? A. Yes.

19 Q. Where does Syzygy Company operate? A. I don't have  
20 the address with me right now. It's on Walsh Avenue.

21 Q. Walsh Avenue in Los Gatos? A. In Santa  
22 Clara.

23 Q. Does the Syzygy Game Company or Syzygy Company place video  
24 games on the street? A. Yes.

25 Q. Where has it placed video games on the street?

26 A. Various places in the Santa Clara Valley.

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1 Q. Anywhere outside of the Santa Clara Valley?

2 A. No.

3 Q. Do you hold a position in any other companies other than

4 Syzygy Company and Atari, Inc.?

5 A. There are posi-  
6 tions--I hold a position in Atari Pacific but these are Atari  
7 subsidiaries. Do they need to be enunciated?

8 Q. At least we should identify them or I would like to. Atari  
9 Pacific?

A. Yes.

10 Q. Incorporated, is it?

A. Yes.

11 Q. I-n-c period and where is that located? At the same address  
12 as Atari Inc.?

A. No. It's in Honolulu and  
I do not have the address.

13 Q. What is your position with Atari Pacific, Inc.?

14 A. I am a member of the board.

15 Q. What is the nature of the business of Atari Pacific, Inc.?

16 A. It places and operates video amusement machines.

17 Q. Where does it place and operate video games or amusement  
18 machines?

A. In the Pacific Basin.

19 Q. Is that primarily in the Hawaiian Islands?

20 A. Yes, it is including Guam.

21 Q. For how long has Atari Pacific been in existence approxi-  
22 mately?

A. Six months.

23 Q. Has it ever placed games outside of the Hawaiian-Guam  
24 complex?

A. No it hasn't.

25 Q. Do you hold a position in any other companies?

26 A. No I do not.

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1 Q. Does Atari Inc. have any other subsidiaries partially or  
2 wholly owned?

3 A. We have a current invest-  
4 ment in Japan but at this point Atari does not own that invest-  
5 ment.

6 Q. Does Atari, Inc. have an investment interest in the Japanese  
7 operation?

8 A. Yes.

9 Q. Well, roughly what percentage interest?

10 A. Right now it's an accounts receivable interest and a cash  
11 interest and a formalization of that corporation is not complete.

12 Q. Does Atari, Inc. presently have any equity interest in the  
13 Japanese company?

14 A. No.

15 Q. Is it contemplated that Atari, Inc. will have an equity  
16 interest in the Japanese company once the mechanics are com-  
17 pleted?

18 A. It has not been determined  
19 as yet.

20 Q. What is the name of the Japanese entity at the present  
21 time?

22 A. Atari Japan.

23 Q. What is the nature of the business of Atari Japan?

24 A. To assemble and operate video amusement machines.

25 Q. Is it presently assembling video amusement machines?

26 A. Yes.

Q. Is it presently operating video amusement machines?

A. Yes.

Q. In what geographical area is it operating the machines?

A. Tokyo.

Q. From whence does it obtain the parts or raw materials to

1 assemble the video machines that they assemble?

2 A. Atari in the U.S.

3 Q. Does Atari assemble all of the component parts or does  
4 Atari, Inc. provide all of the component parts for Atari Japan?

5 A. No.

6 Q. What parts does Atari, Inc. provide to Atari Japan?

7 A. Computers.

8 Q. In addition to a computer what are the basic building blocks  
9 of an Atari video amusement machine? A. A cabinet,

10 CRT monitor, coin mechanism.

11 Q. Has Atari Japan assembled any video amusement machines for  
12 export? A. I don't know.

13 Q. Do you know whether it is contemplated that Atari Japan  
14 will assemble any video amusement machines for export?

15 A. They may if they so desire.

16 Q. Does Atari Inc. control whether or not Atari Japan exports  
17 to the United States? A. No.

18 Q. Is it contemplated in the formative stage of Atari Japan  
19 that Atari Inc. will control the export of video amusement  
20 machines from Atari Japan to the United States?

21 A. It has not been determined as yet.

22 Q. Does Atari, Inc. have any other wholly or partially owned  
23 subsidiaries? A. No.

24 Q. Does it control any other companies?

25 A. Excuse me, I would like to retract that last statement.

26 We control Kee Games, Inc.

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1 Q. That is K-e-o? A. Yes.

2 Q. What is Kee Games, Inc.? A. A manufacturer  
3 of video amusement machines.

4 (Slight recess.)

5 A. RETURN: Q. Mr. Byrnes, I think just before the  
6 break you stated that Kee Games, Inc. was a manufacturer of  
7 video amusement games. Where is Kee Games, Inc. located?

8 A. They are located in Santa Clara.

9 Q. Do you hold any position with Kee Games, Inc.?

10 A. No.

11 Q. What is the relationship between Kee Games, Inc. and Atari,  
12 Inc.?

A. Atari has an equity interest.

13 Q. Is it a controlling interest? A. Yes it is.

14 Q. Does Kee Games, Inc. manufacture a different product line  
15 than Atari, Inc.-- A. Yes.

16 Q. --or the same? A different? A. Yes.

17 (Off the record discussion.)

18 Q. Who are the principal officers of Kee Games, Inc.?

19 A. Joseph Keenan.

20 Q. K-e-e-n-a-n? A. Yes.

21 Q. Is he president? A. Yes.

22 Q. Who else? A. Bill White.

23 Q. W-h-i-t-e? A. Yes.

24 Q. What is his position? A. I think he is  
25 secretary. Steven Bristow.

26 Q. Bristow, Inc. A. Bristow, Inc. (Slight recess.)

- 1 Q. What is Briscoe's position? A. He is treasurer.
- 2 Q. And Williams? A. Director.
- 3 Q. Are any of these gentlemen officers or directors of Atari,  
4 Inc.?
- 5 A. No.
- 6 Q. Are any of them employed by Atari, Inc.?
- 7 A. No.
- 8 Q. Does product line come under Games, Inc. jurisdiction in the  
9 video amusement game field or amusement device field?
- 10 A. The Kee product line under the name Kee Games.
- 11 Q. Do they qualify product names within the line?
- 12 A. Elimination, Formula K, Spike.
- 13 Q. Any others?
- 14 A. That is it.
- 15 Q. Are any of these three games played in the same general  
16 manner as Pong?
- 17 A. Not in the same general  
18 manner.
- 19 Q. Is there a movable playing element that moves back and  
20 forth across the screen?
- 21 A. Yes.
- 22 Q. In which ones is that true?
- 23 A. There is motion  
24 involved with all of the games.
- 25 Q. Are there players, two or more players in all three games?
- 26 A. No.
- 27 Q. In any of them?
- 28 A. Yes.
- 29 Q. In which one?
- 30 A. Elimination.
- 31 Q. How many players does Elimination have?
- 32 A. One to four.
- 33 Q. Is there a movable playing element of some sort in Elimination?

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52 SECOND STREET

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1 A. There is motion involved. I don't understand the question.

2 Q. A display which is moving in the course of playing the

3 game? A. Yes.

4 Q. What do you call that thing which moves?

5 MR. MUMFERT: I have to object. You are going something  
6 on the background but it seems to me we are getting a little  
7 more deeply into the conversation. I've only been asked to  
8 open this case, and by understanding in this connection is that  
9 it is to be limited to the question of venue so far as Atari  
10 is concerned.

11 MR. ANDERSON: I think one question in venue is what pro-  
12 ducts are made and where they are made and where they are sold.

13 MR. MUMFERT: As far as our action for dismissal for lack  
14 of venue, the product line hasn't even been mentioned. The  
15 action is based upon no business at all and no place of business  
16 at all in the northern district of Illinois.

17 MR. ANDERSON: I understand, you know, your affidavit I  
18 think and your contentions.

19 Q. What do you call the moving display in Elimination?

20 A. The moving display, which is also called variously the  
21 paddle.

22 Q. Now the paddle is manipulated by one of the players, is  
23 that right in elimination? A. Yes.

24 Q. And in this manipulation in order to hit some other display?

25 A. Yes.

26 Q. What do you call that display which the paddle is intended

1 to hit? I'm just trying to get some nomenclature. We seem to  
2 be having trouble. A. Ball.

3 Q. And Elimination has a ball? A. It has a square.

4 Q. Would you call that square a ball?

5 A. Yes.

6 Q. Is it the object of the game that a player manipulates the  
7 paddle so that it will change the ball and cause it to go toward  
8 ward the other player's end of the playing display?

9 A. Yes.

10 Q. And if the paddle interacts with the ball, does it change the  
11 direction of the ball? A. Yes.

12 Q. And if the paddle fails to hit the ball, does the ball go  
13 off the end and disappear? A. Yes.

14 Q. And does that score a point? A. No, it  
15 doesn't.

16 Q. What is the manifestation then of the ball going off of the  
17 field? A. It beeps.

18 Q. Is there any scoring involved in Elimination?

19 A. There is a tally which is eliminated.

20 Q. Are there any barriers across the top and bottom  
21 of the display in Elimination? A. No.

22 Q. Are there any time barriers that cause the ball to change  
23 its direction in Elimination? A. Yes.

24 Q. Where are they located? A. In the corners.

25 Q. If the ball impacts on one of the barriers, does it change  
26 its direction? A. Yes.

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1 Q. Does the description that you have just given generally  
2 describe the way in which Pong is also played?

3 A. No.

4 Q. How does it differ?

5 A. I don't really under-  
stand the question. The essential differences of the game?

6 Q. Yes.

7 A. One is a contest between  
two people only.

8 Q. That is Pong?

9 A. Yes, and there are no  
provisions for four players.

10 Q. Any others?

11 A. Let's say the tables are  
arranged on four sides.

12 Q. In Elimination?

13 A. Yes.

14 Q. Any others?

15 A. No.

16 Q. Where does Koe Games Incorporated sell its products?

17 A. Throughout the United States and some into Europe.

18 Q. When was Koe Games, Inc. started?

19 A. October of  
1973.

20 Q. Does Koe Games, Inc. place machines on the street?

21 A. No.

22 Q. Does it only sell products?

23 A. Yes.

24 Q. Does it have any other products other than the three games  
that you mentioned: Elimination, Tennis II and P. S. II?

25 A. There are small modifications but nothing that we consider  
to be new products.

26 Q. Does Koe Games, Inc. have a distributor organization or  
some sort?

A. Yes.

1 Q. What is the nature of that organization?  
2 A. I don't know.  
3 Q. Does it have any employees outside of the San Jose area?  
4 A. No.  
5 Q. Does Koe Games, Inc. have a distributor in the Chicago area  
6 that you know of? A. Yes.  
7 Q. Who is that? A. Worldwide.  
8 Q. Do you know the full name of the company?  
9 A. No, I don't. I think it's Worldwide Distributors.  
10 Q. Do you know where they are located?  
11 A. No, I don't.  
12 Q. When did Koe Games, Inc. first deal with Worldwide distribu-  
13 tors approximately? A. I don't know.  
14 Q. Was it before the first of this year?  
15 A. Yes.  
16 Q. Has Koe Games, Inc. sold the game Elimination to Worldwide  
17 Distributors? A. Yes.  
18 Q. Has Koe Games sold the game Formula K to Worldwide Dis-  
19 tributors? A. Yes.  
20 Q. Has Koe Games, Inc. sold the game Spike to Worldwide Dis-  
21 tributors? A. Yes.  
22 Q. How long has Elimination been in the Koe Games product line  
23 system? A. Since I believe was  
24 their shipment.  
25 Q. Of Elimination? A. Of any game.  
26 Q. Was Elimination the first game that Koe Games, Inc. made



1 and sold? A. Yes.

2 Q. When was the first Formula K game sold or exhibited to  
3 Worldwide Distributors? A. It probably would be April.  
4 I am not sure.

5 Q. Of 1974? A. Yes.

6 Q. Does Formula K involve paddles? A. No.

7 Q. Or a ball? A. No.

8 Q. Does it involve motion of at least of a playing device on  
9 display? A. Yes.

10 Q. Do you by any chance have literature with you on any or all  
11 three of these games? A. No.

12 MR. ANDERSON: May we have some literature on the three  
13 games, Mr. Herbert?

14 MR. HERBERT: We have no--at least I have no control over  
15 Has Games. They are not a party to this lawsuit. Do you have  
16 literature at Atari?

17 THE WITNESS: No.

18 MR. HERBERT: Atari does not.

19 MR. ANDERSON: It's a controlled corporation.

20 MR. HERBERT: It's also a separate corporation. I am not  
21 was already involved and he doesn't even know what the distributor-  
22 ship arrangements are.

23 MR. ANDERSON: Well, it is known that the distributor is, when  
24 the product was shipped. You are going to sit on the sidelines  
25 ate isolation that you are alleging?

26 MR. HERBERT: Oh, yes.

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1 MR. ANDERSON: And will not provide us with printed dis-  
2 tributed, publicly available literature on that basis?

3 MR. HERBERT: If they have them at Miami I certainly will.  
4 If not I'm not going to Koe to get them, no.

5 MR. ANDERSON: Q. Describe the summer in which Formula 1  
6 is played?

7 MR. HERBERT: I am going to object to this line of ques-  
8 tioning again, that is for nothing really to do with the case. I  
9 want questions before the case and I will insist on the case  
10 not to come in. All it is doing is extending the length of the  
11 deposition.

12 MR. ANDERSON: Now I will say the witness has testified  
13 it's a wholly owned--

14 MR. HERBERT: No.

15 MR. ANDERSON: It is a controlled subsidiary and I think we  
16 are entitled to interrogate this witness to the extent he has  
17 this knowledge about a controlled subsidiary. I think I have  
18 made a long trip to get a reasonable amount of very basic  
19 information.

20 MR. HERBERT: If and when you pass the venue hurdle, I think  
21 that is probably true but until you pass that hurdle I can't  
22 insist that you are entitled to go into the workings of the  
23 company or its or even its assets.

24 MR. ANDERSON: I'm not asking about the workings of the  
25 company. I'm asking about the assets, the property and the  
26 information of the company, that is the information of the company.

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1 which is made by a controlled subsidiary of Atari, Inc., a  
2 defendant in this lawsuit.

3 MR. HERBERT: It has nothing to do with the venue question.  
4 The venue question at this point as far as I can see from the  
5 line has nothing to do with what is manufactured by Koe. It  
6 really has nothing to do with what is manufactured by Atari.  
7 We have not gotten into that. If and when we do we will  
8 find out whether or not Atari's machines or Koe's machines infringe  
9 any of the patents involved in the litigation.

10 MR. ANDERSON: And you are instructing the witness not to  
11 answer?

12 MR. HERBERT: I instruct the witness not to answer.

13 MR. ANDERSON: Well, we will certainly take appropriate  
14 steps, I hope not but perhaps to make another trip out here soon  
15 that passage of hopefully Atari's and Koe Games' corporate brochure  
16 I think this is so clearly a thin corporate relationship that  
17 we are entitled to pierce or at least try to pierce that. We  
18 will certainly take the position you are violating the intent  
19 and the language of the Federal rules of civil procedure.

20 MR. HERBERT: You can try to pierce the corporate relationship  
21 to see whether Koe has a place of business in the northern  
22 district of Illinois, that is fine. You can attempt to do that.  
23 That is not what you are attempting to do with this line of  
24 questioning.

25 MR. ANDERSON: We have established that Koe Games are in  
26 the northern district of Illinois, they are sold there, California

1 then I proceed. We will get into that further, that they have  
2 a distributor here and I think we are entitled to explore just  
3 how these games are used, that is done with them when they come  
4 there to the extent this witness knows and if we can't get it  
5 from this witness we will make another trip out here to get the  
6 information we are entitled to.

7 THE COURT: You are entitled to place the computer work  
8 if you can. You have not even attempted to do that at this  
9 point. Until that trial is placed in the activities of the court,  
10 and bring a copy of that suit here nothing to do with it.

11 MR. ANDERSON: Q. Mr. Nicholson, does Formula K involve  
12 moving a paddle?

13 MR. HERBERT: I instruct the witness not to answer.

14 MR. ANDERSON: Q. Will you answer the question?

15 A. No, I will not.

16 Q. Does the game Spike involve a moving paddle?

17 MR. HERBERT: I instruct the witness not to answer on the  
18 same grounds.

19 MR. ANDERSON: Q. Does the game Spike involve a ball?

20 MR. HERBERT: I instruct the witness not to answer on the  
21 same grounds.

22 MR. ANDERSON: Q. What is the percentage control which  
23 Atari, Inc. has in Koe Games Incorporated?

24 Off the record.

25 (Off the record discussion.)

26 THE WITNESS: Atari has in excess of 90 percent.

1 MR. AMBROSIO: Q. That is 90 percent of the stock of Atari  
2 Games, Inc., is that correct?

3 A. That's correct.

4 Q. Who holds the remaining 10 percent?

5 A. George Harrison.

6 Q. Was he ever employed by Atari, Inc.?

7 A. No, he was not.

8 Q. Was he ever employed by any other entity which Atari, Inc.  
9 owned or controlled? A. No.

10 Q. And there are other companies which Atari, Inc. controls?

11 A. Previously stated.

12 Q. Other than the ones we have covered already?

13 A. No.

14 Q. When was Atari, Inc. formed? A. Its incorporation  
15 date was June of 1972.

16 Q. Did it continue the business activities of some other  
17 entity? A. Yes, it did.

18 Q. What was that entity? A. Syzygy Company.

19 Q. Was it then Syzygy Game Company? A. No.

20 Q. It was then Syzygy Company? A. Yes.

21 Q. A proprietorship? A. A partnership.

22 Q. Who were the partners in Syzygy Company?

23 A. Myself and Mr. Ted Babney.

24 Q. Did one of you control the company? A. Yes.

25 Q. Did you? A. Yes.

26 Q. At the time of the formation of Atari, Inc. did Syzygy

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 392-0116

1 a product line? A. Yes.

2 Q. What was that product line? A. Pong. Because

3 no. At the time that is not true. Pong wasn't really introduced

4 until later on. I guess I should say publication here.

5 Off the record.

6 (Temporary discussion.)

7 MR. HERBERT: Back on the record.

8 THE WITNESS: What do you mean by do you have a product

9 line?

10 MR. HERBERT: Q. Did Syzygy have any product that at the

11 time and selling as of June 1972?

12 A. No.

13 Q. Did Syzygy Company at any time in its history sell a product?

14 A. What do you mean by product?

15 We were operating amusement machines which we had purchased.

16 Q. As of June 1972 was Syzygy operating amusement machines

17 which it had purchased? A. Yes.

18 Q. Was Syzygy Company in June of 1972 operating any video

19 amusement machines? A. Yes.

20 Q. Was that portion of the business of operating video amusement

21 machines transferred in some way to Atari, Inc. in June

22 of 1972? A. Yes, it was.

23 Q. Was the entire entire business of Syzygy, Inc. transferred

24 to Atari, Inc. at that time? A. Yes, Syzygy Co.

25 Q. From June 1972, Syzygy Co. I am asking. Did Syzygy Co. at that

26 time continue to have an operating business?

1 A. No, it didn't. It turned into a BBA.

2 Q. And BBA is for-- A. Doing business as.

3 Q. I'm not sure I understand that. Who was doing business as  
4 what? A. Atari was doing business as

5 Sperry.

6 Q. Sperry is a name or is it just a name that Atari used, is  
7 that correct? A. That's correct.

8 Q. At what time in 1972, these video amusement machines was first  
9 operating? A. A game called Computer Space

10 built by Nutting Associates.

11 Q. Did Atari, Inc. continue to operate video amusement machines  
12 after June of 1972? A. Yes.

13 Q. Is Atari, Inc. operating video machines today?

14 A. Yes.

15 Q. At some point in time did Atari, Inc. operate any other  
16 games other than Computer Space? A. Yes.

17 Q. What other games has Atari, Inc. operated?

18 A. Pong, Space Race, Catcha, Centrak, Rebound, Quadrapong.

19 Q. Any others? A. World Cup, Super Pong,  
20 Pong Doubles, Color Catcha.

21 Q. In what time first as far as you know to the present time?

22 A. Yes.

23 Q. Of these which if any is Atari, Inc. run at the present  
24 time operating? A. Color Catcha--no, that is

25 not true, I will take that back. All of them.

26 Q. By operating, do you mean street operation?

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0115

1 A. That's correct.

2 Q. Is there any separate entity of Atari, Inc. or a division  
3 which handles the street operation?

4 A. No.

5 MR. HENNING: Before we go on I think the attorney should be  
6 misloading. The question was which of these is Atari not  
7 operating and your answer was all of them.

8 MR. ANDERSON: Q. None of them? That is correct?

9 A. None of them.

10 Q. That is the way I understand your answer. Has Atari, Inc.  
11 operated any video games outside of the State of California?

12 A. Yes.

13 Q. Where outside of the State of California?

14 A. Salt Lake City, Hawaii, Tokyo, Guam. That is it.

15 Q. Within the State of California does Atari, Inc. operate  
16 games throughout the state or only in a limited geographical  
17 area? A. A limited geographical area.

18 Q. Just generally what is the limited area?

19 A. Santa Clara Valley.

20 Q. At any time in the history of Atari, Inc. has it operated  
21 video games in areas other than those that you have listed:  
22 Salt Lake City, Hawaii, Tokyo, Guam and the Santa Clara Valley?

23 A. Clarify what you mean by "operate"?

24 Q. Street operation of any kind.

A. Define that?

25 Q. Well, it's a term that I found somewhere in your material,  
26 I think. Does street operation have a meaning to you?

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

4151 362-0118



1 A. Well, yes, it means placing on location and collecting  
2 the revenues therefor. That is what I mean by street operation.

3 Q. I then would ask you the question using that definition  
4 of street operation.

5 A. Could you repeat the ques-  
6 tion again?

7 Q. Yes. Has Atari, Inc. at any time in its history operated  
8 in a street operation outside of the areas that you have listed,  
9 namely, Salt Lake City, Hawaii, Tokyo, Guam and the Santa Clara  
10 Valley?

11 A. No, we haven't. I mean  
12 I will take that back. We have operated machines in Los  
13 Angeles since we sold.

14 Q. You have since sold?

15 A. Yes.

16 Q. Has Atari, Inc. at any time operated machines outside of  
17 the geographical areas you have just listed on a sole limited  
18 basis than the operation which you described, total control,  
19 maintenance and so forth? In other words, have you placed  
20 any machine else in the United States where Atari, Inc.  
21 maintained ownership of it for some time or greater or lesser  
22 amount of time and perhaps received any coins that were placed  
23 in it?

24 A. No.

25 Q. With respect to the operation of Syzygy prior to June of  
26 1972, did it operate in all of the areas that you have listed  
27 in street operations?

28 A. No.

29 Q. What about did it operate in?  
30 Santa Clara Valley.

31 A. Just the

32 Q. Did Syzygy, Inc. operate any game other than the one that

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you have mentioned made by Nutting Associates named Computer Space--I said SYZYGY, Inc., I mean SYZYGY Co.--prior to June of 1972?

A. We operated other amusement machines purchased by various Chicago and Florida manufacturers that were nonvideo.

Q. SYZYGY Co. purchased other amusement machines, nonvideo games, from other sources. Did this include Allied Industries?

A. Yes.

Q. And what Chicago company? Midway?

A. They were all purchased in San Francisco.

Q. These Chicago machines did you purchase in San Francisco?

A. Oh, Midway, Gottlieb, Chicago Coin, Williams. We were in the operating business.

Q. Is the game Computer Space or is the video amusement machine Computer Space a paddle game?

A. No.

Q. Does it have a moving playing piece?

A. Yes.

Q. Is it a ball?

A. No.

Q. Can you just generally describe the game, Computer Space?

A. It's a rocket ship-flying saucer fight. The computer controls a flying saucer battles with a player controlled rocket ship.

MR. ANDERSON: I will have the reporter mark as Bushnell deposition Exhibit 1 a Notice of Taking Deposition.

(Notice of Taking Deposition  
Exhibit No. 1 for identification)

MR. ANDERSON: Q. And I hand you Exhibit 1, Mr. Dushnell,

1 and ask you if you have seen that before or a copy of it?

2 A. Yes, I have.

3 MR. HERBERT: What is it? Can you identify it?

4 MR. ANDERSON: The Notice. Buchanan Deposition Exhibit 1  
5 is directed to defendant Atari, Inc. and has listed certain  
6 categories in which the defendant has been requested to pro-  
7 duce documents.

8 Q. Have you caused a search to be made for documents responsive  
9 to those categories? A. Yes, I have.

10 Q. Have you produced any documents here today in response to  
11 that Notice?

12 MR. HERBERT: I might interject here with respect to  
13 Paragraph No. 1, the only documents located are documents  
14 which have already been produced in Chicago, the contracts.  
15 I have other copies but I am not going to add anything to it.  
16 They are the same as Britz Deposition Exhibit 3, Britz  
17 Deposition Exhibit No. 2 and Ross Deposition Exhibit No. 3.

18 MR. ANDERSON: May I see them?

19 MR. HERBERT: I didn't even bring them in here. I have  
20 them--yes, I will get them.

21 (Short recess.)

22 MR. HERBERT: I was mistaken. I do not have the letter  
23 on Stagg's letterhead which is Britz Deposition Exhibit No. 3,  
24 and in addition to that the contracts on which Britz and I  
25 have all the time been working are what the contracts are  
26 presented in Chicago.

1 MR. ANDERSON: Does Mr. Bushnell or Atari have fully  
2 executed documents?

3 MR. HERBERT: No, that we can locate.

4 MR. ANDERSON: Then what you have handed me are the best  
5 documents in the records of Atari, Inc. at the present time?

6 MR. HERBERT: That is all we can locate.

7 MR. ANDERSON: I will have the reporter mark as Bushnell  
8 deposition exhibit 2 a stapled collection of documents which  
9 Mr. Herbert has handed me. The top page is marked "Royalty  
10 Agreement", it is two pages of Xeroxed material. It bears  
11 a date 26 day of June 1972, followed by an Affidavit form  
12 bearing the date 1st of June 1971, a second Affidavit form  
13 bearing the date of June 1972 and a second two page Royalty  
14 Agreement or document so labeled between Rally Manufacturing  
15 Corporation and Syzygy Co., the first one I notice between  
16 Rally Manufacturing Corporation and Nolan Bushnell.

(Group of documents being  
Royalty Agreements and Affidavits marked "deposition  
Exhibit No. 2 for identification.")

20 MR. ANDERSON: Q. Mr. Bushnell, I hand you Bushnell  
21 deposition Exhibit 2 and ask--

22 Would you like to see it?

23 MR. BUSHNELL: Yes, please.

24 MR. ANDERSON: Q. Mr. Bushnell I hand you Bushnell  
25 deposition exhibit 2 which you heard me briefly describe on  
26 the record and ask you whether you are familiar with those

1 document?

A. Yes, I do.

2 Q. Did they come from any files which you maintain?

3 A. Yes, they did.

4 Q. What file did they come from?

A. It came from what

5 I call essentially the Bally file.

6 Q. Is that a file that is maintained at the offices of the B. &

7 Inc.?

A. Yes, it is.

8 Q. Did you find in your search any other copies of the documents  
9 which are stapled together as Bushnell deposition

10 Exhibit 2?

A. Yes, we have a copy of

11 this document.

12 Q. You have another copy of the document?

13 A. Yes.

14 Q. Do you have any originals or non-reproduced copies of the  
15 documents that you know of?

A. No, I don't

16 believe I do.

17 Q. Do you have any copies of any of the documents which form  
18 a part of Bushnell deposition Exhibit 2 which have actual  
19 signatures?

A. Not to my knowledge. This

20 is the most complete form.

21 Q. Do you know who prepared the first document, the first set  
22 of pages of Bushnell deposition Exhibit 2?

23 A. No.

24 Q. Was it prepared in California or in Chicago?

25 A. Chicago.

26 Q. How did it come into your possession?

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

415/362-0118

1 A. It was given to me by Mr. Britz.  
2 Q. Was that while you and he were together?  
3 A. Yes.  
4 Q. Where were you at that time? A. I don't remember.  
5 Q. Were you in Chicago at the time? A. I am not  
6 sure whether I received it in the mail or whether it was  
7 brought to me in Chicago.  
8 Q. Did you ever have any correspondence with anyone at Bally  
9 or Midway with respect to this subject matter?  
10 A. I don't remember.  
11 Q. Have you made a search for such correspondence?  
12 A. Yes, I have.  
13 Q. Have you been able to find any? A. Only those  
14 things which are presented here.  
15 Q. Are there any other documents, Mr. Herbert, that you are  
16 producing in response to our request?  
17 MR. HERBERT: No. We had no other documents we considered  
18 to be in response to the request in the Notice but in view of  
19 the long discussion of our invoices in Chicago we did bring  
20 invoices. I don't think they respond to any paragraph here  
21 but we do have invoices to Empire Distributing.  
22 Q. All right. Perhaps we will just take those and mark them  
23 at this time or look at them and come back to them later.  
24 MR. HERBERT: Insofar as marking and making of record,  
25 there are a fair number of them and they are invoices giving  
26 pricing information as well as the volume of business between

1 state and Empire which may or may not be relevant here. I am  
2 perfectly glad to let you take a look at them. If you think  
3 any pertinent ones of them need to be marked as exhibits  
4 perhaps we can delete some portions that are not necessary  
5 for your purposes..

6 MR. ANDERSON: All right.

7 MR. HERBERT: But I prefer not to have them marked as  
8 exhibits at this time and let you take a look at them at your  
9 leisure, perhaps in a short recess.

10 MR. ANDERSON: All right. Why don't you lay them out?  
11 We will look at them in a short recess and pursue the Royalty  
12 Agreement which is the first two pages of Bushnell deposition.  
13 Exhibit 2.

14 Q. Mr. Bushnell, do you recall whether you signed the original  
15 of the Royalty Agreement which forms the first two pages of  
16 Exhibit 2?

A. Yes, I believe I did.

17 Q. I will show you Ross deposition exhibit 3 and ask you if  
18 you recognize that?

A. Yes, I do.

19 Q. And is that another copy of the Royalty Agreement which  
20 is the first two pages of Bushnell Exhibit 2?

21 A. It appears to be so.

22 Q. And does it bear your signature?

A. Yes, it

23 does.

24 Q. Did you sign it on or about the 10th of June 1972?

25 A. I don't know. I believe I did.

26 Q. The first page of the Ross deposition exhibit 2 is a

SOCRATES NICHOLSON

AND ASSOCIATES

CIVIL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

415 382 0119

1 unsigned, entitled "Affidavit" and it states in part "I,  
2 Nolan Bushnell, of ( ) hereby state and  
3 affirm that as of the 1st of June 1971 I no longer had any  
4 obligatory duties to Mattel and Associates" and it goes on.  
5 Do you recall having seen that affidavit before?

6 A. Yes, I have.

7 Q. Do you know who prepared it?

A. Fully aware of it.

8 Q. Did you provide them with the information for its prepara-  
9 tion?

A. No, I didn't.

10 Q. To your knowledge, did they ever give you any reason why they  
11 prepared it?

A. They felt that there might be  
12 some kind of a conflict because I was previously in the area  
13 of Mattel, and there was a document signed with Mattel with  
14 regard to certain things, certain tasks, that I would perform  
15 there, and they were concerned since they were in competitive  
16 areas that there may be some cause for legal action.

17 Q. Do you know if you signed the form Affidavit which com-  
18 prised the third page of Bushnell deposition Exhibit 2?

19 A. Yes.

20 Mr. HERBERT: I would like to point out to the witness  
21 the third page of Exhibit 2 looks very similar to the fourth  
22 page of Britz deposition Exhibit No. 3 and request that the  
23 witness look at it more closely rather than aside from as he  
24 is doing now.

25 Mr. HERBERT: That is an excellent suggestion. I might  
26 say I'm not trying to create an erroneous record, I only want

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

415 381 113



1 to get the facts.

2 THE WITNESS: Yes.

3 MR. ANDERSON: Q. You will note the third page bears a  
4 date of June 1971 I believe, and the fourth page--

5 MR. WELSH: 1st of June.

6 THE WITNESS: Okay.

7 MR. ANDERSON: --is dated June of '72.

8 MR. WELSH: This is the one I signed.

9 MR. ANDERSON: The witness is referring to the one in  
10 prior deposition Exhibit No. 3.

11 MR. ANDERSON: Q. And that is the fourth page of the set  
12 of documents I have had the gentleman mark as Nicholli deposi-  
13 tion Exhibit 2, is that correct? A. Yes.

14 Q. Did Sally also prepare the affidavit which you allegedly  
15 signed, do you know? A. I don't remember. I believe  
16 they did.

17 Q. Do you now recall the reason that new affidavits were  
18 prepared? A. I think there were several  
19 typographical errors in the first one and they were inscribed  
20 in some areas.

21 Q. Was the first merely a draft of the second as they appear  
22 in deposition Exhibit 2? A. I'm not sure. I don't  
23 remember the events that clearly.

24 MR. ANDERSON: Mr. Nicholli, are there any other documents  
25 that are being produced in response to the Notice?

26 MR. NICHOLLI: No. There is nothing else.

1 Mr. MURPHY: Q. Mr. Nicholson, how old are you?

2 A. I am 31.

3 Q. Would you briefly state your educational background from

4 high school? A. I went to Utah State University

5 and later on continued at the University of Utah where I

6 received a Bachelor's degree in electrical engineering

7 and an engineering career in Salt Lake City.

8 Q. In that year did you receive your degree?

9 A. Yes.

10 Q. Did you continue your education beyond that degree in

11 1968 or did you enter business? A. I entered business

12 then.

13 Q. Now when did you go to work at that time?

14 A. Regis Corporation.

15 Q. Located where? A. In Sunnyvale, California.

16 Q. Just in general, what were your duties?

17 A. I was in computer design, digital recording involved in

18 an information, storage and retrieval system.

19 Q. How long did you stay with Regis? A. Two years.

20 Q. So you left them about 1970? A. That's correct.

21 Q. Now when did you leave Regis employed in 1970?

22 A. Nothing to remember.

23 Q. Where was Nutting located? A. Mountain View,

24 California.

25 Q. What was the nature of Nutting's business in 1970?

26 A. They were a computer design and development firm.

1 Q. At that time did they have a video amusement game that  
2 they were making and selling? A. No.

3 Q. What generally was the nature of their amusement  
4 games at that time? A. It was a question and  
5 answer game using film storage techniques.

6 Q. What were your duties when you joined Nutting?

7 A. As chief engineer.

8 Q. Approximately how many employees did Nutting have at that  
9 time? A. 20.

10 Q. How long did you stay at Nutting?

11 A. One year.

12 Q. So that you left in about 1971? A. Yes.

13 Q. At the time that you left Nutting, did Nutting have a  
14 video amusement device that they were making and selling?

15 A. Yes.

16 Q. When in 1971 did you leave? A. It was actually  
17 in 1972--it was in February I believe of '72 actually.

18 Q. Did Nutting have more than one video game on the market  
19 that they were making and selling at that time in February of  
20 1972? A. No, they did not.

21 Q. What was the game? A. Computer Space.

22 Q. Can you describe what this was Computer Space first made  
23 and sold by Nutting as far as you can recall?

24 A. I believe that the first unit was sold in late December  
25 or early January of 1972.

26 Q. Were you involved in the design of the game Computer

1 space or the machine Computer Space?

A. Yes, I was.

2 Q. What was your involvement?

A. The machine was

3 designed by me independently and ordered to Nutting, Inc. on a royalty basis.

4  
5 Q. Was it ordered by you independently while you were an  
6 employee of Nutting?

A. No.

7 Q. Was it designed prior to your employment by Nutting?

8 A. Yes, it was.

9 Q. Is there any other agreement between you and Nutting  
10 subject to a royalty basis for equipment or for the use of

11 A. Yes there is.

12 Mr. Nutting: I will have the reporter make an exhibit  
13 deposition Exhibit 3 a copy of United States Patent 3,770,000.

(Copy of United States Patent  
3,770,000 made and read  
at Nutting, Inc. 5/1/68  
for exhibit 3.)

14  
15  
16  
17 Mr. Nutting: Q. Mr. Nutting, I have you made an  
18 deposition Exhibit 3 and ask you if you see the words "No. 1" or  
19 words used in that patent?

A. Yes.

20 Q. Is that a part of your work?

A. Yes, it is.

21 By assigned to Nutting, Inc.

22 Q. Based on the lines and of that patent, does that mean  
23 to the subject matter of the work that you did while you  
24 at Nutting?

A. No. Well, it represents

25 the subject matter which I did while at Nutting, Inc.

26 Q. You testified that you had independently developed the

1 gave computer space before you joined Intertec I believe?

2 A. That's correct.

3 Q. Now is that the subject matter to the best of your knowledge

4 of your Patent 3,793,433?

5 A. I can't quite understand.

6 Mr. Anderson: I am going to object to that. He has given  
7 the witness the right to answer the question and he has  
8 not the right to answer the question. He has the right to  
9 answer the question but unless there is a going to instruct the  
10 witness--I do instruct the witness not to answer.

11 Mr. Anderson: Q. Patent 3,793,433 relates to video  
12 image processing, does it not? A. Yes it does.

13 Q. Does Atari, Inc. have any licenses under Patent 3,793,433?

14 A. Yes.

15 Q. Is Intertec Association a licensee?

16 A. Only in the sense that they have a right to manufacture or had a right to manufacture  
17 under the terms of a contract to build that particular machine  
18 which was copied.

19 Q. When you say that particular machine, you mean the machine  
20 Computer Space which you developed? A. Yes.

21 Q. You would not say that was the only machine on the machine  
22 market that was developed by you or Intertec?

23 A. I don't know. I don't believe that.

24 Q. Now when you say that machine, does your Patent 3,793,433  
25 cover that machine?

26 A. I don't know. I don't believe that.

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND INTERPRETERS  
SAN FRANCISCO 94102

52 SECOND STREET

(415) 398-0111

1 witness not to answer on the ground that it has nothing to do  
2 with the venue question.

3 MR. ARROWOOD: Well, I disagree that it has nothing to do  
4 with the venue question. I don't think we should ever get  
5 back to it though at a later point. We may find it more  
6 appropriate, I don't know.

7 THE COURT: Would it be improper to ask you to comment  
8 that up right now as to where that is going?

9 MR. ARROWOOD: All right, I will certainly get back to it  
10 in part for you, Mr. Riddell.

11 MR. RIDDELL: With regard to the venue question.

12 THE COURT: O. Mr. Riddell, what is anything did you  
13 do in response to or pursuant to the verbal agreement of  
14 June 24 1972, Exhibit C - position exhibit 2?

15 A. I produced a video amusement machine and a four player  
16 flipper type pinball machine.

17 Q. Did they have names? A. The video amusement  
18 game had no name at that time nor did the pinball.

19 Q. Were they subsequently named, do you know?

20 A. The machines were given names and so, it should be  
21 clarified. I had in my possession at the time of the creation  
22 of this agreement the two machines and several games including  
23 a video type pinball machine, including a video video  
24 game, the game, the video game, the video game is not to  
25 any machine, I don't know the machine, nor do any product of  
26 pinball machine.

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

415 382 01 8

1 MR. NICHOLSON: Q. You stated that you did develop or had  
2 developed two amusement machines that you

3 A. Several.

4 Q. Well, you mentioned two, a video amusement machine, a video  
5 and a four player fifty slot game, at least that I heard of  
6 and I think I saw it when I was in the room. Did you say  
7 you said they didn't at the time that you delivered them to  
8 Bally? I asked if they were brand new machines and that was  
9 the answer to that question if you know?

10 A. There was a machine in the room, I think it was brand new  
11 Pong represented to Bally.

12 Q. And was that the video amusement machine that you delivered  
13 to as one of the machines delivered to Bally when the provisions  
14 of P.X. 2? A. Yes.

15 Q. Did you develop any other video amusement machines which  
16 you delivered to Bally or Midway? A. Yes I did.

17 Q. How many? A. There were two.

18 Q. Two additional ones beyond Pong? A. No, one.

19 Q. One additional one. Was it delivered to Bally or to  
20 Midway? A. To Midway.

21 Q. Was it used in connection with the Regulatory Agreement, the Moore  
22 and Page of Michael Page International 2?

23 A. Yes, it was.

24 Q. Why did you deliver that game to Midway when you were  
25 under agreement with Bally? A. I was instructed  
26 to do so.

SOCRATES NICHOLSON

AND ASSOCIATES  
OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

52 SECOND STREET

415/362-0118

1 Q. By whom?

A. By Bally.

2 Q. Who at Bally instructed you, do you know?

3 A. Mr. Liller.

4 Q. On what occasion did he instruct you to do that?

5 A. That was the occasion when I presented the board game to them.

6 Q. Did you present that to them in person?

7 A. Yes I did.

8 Q. In the Chicago area?

A. Yes I did.

9 Q. Where did you do that?

A. At their corporate

10 meeting.

11 Q. At Bally's corporate offices?

A. At Midway's

12 corporate offices.

13 Q. Is that in Midway Park, Illinois, do you know?

14 A. Yes it is.

15 Q. What was the name of that game if it had a name at that  
16 time?

A. It was called VP-2 or

17 Android as it was later.

18 Q. Did VP-2 or Android precede Pong in your development or  
19 was it subsequent?

A. When you say--would you

20 please say or say it again?

21 Q. VP-2, Pong, and Android which one you delivered  
22 to Midway or Bally first.

A. Pong.

23 Q. Did you deliver Pong to Bally or Midway  
24 first?

A. I delivered it to Bally first.

25 Q. When?

26 Q. When did you deliver VP-2 or Android to Bally or Midway?

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 352-0118



1 A. It was at time later than that. I think it was in early  
2 1973.

3 Q. Did you deliver Pong to Bally or to Midway?

4 A. To Bally.

5 Q. But you delivered Astroid to Midway? A. Yes.

6 Q. I will ask you to comment that has previously been  
7 as I like Corporation Exhibit 2 and ask you if you recognize it.

8 A. What was the question again?

9 Q. Whether you recognize the letter? A. Yes I do.

10 Q. Does it bear your signature? A. Yes it does.

11 Q. Did you write it on about the date it bears?

12 A. I must have, yes.

13 Q. Does that refresh your recollection at all with respect to  
14 when you delivered the first Pong game to Bally?

15 A. Yes it does--I think it was prior to the date called for  
16 here but I think it was in the early fall.

17 Q. So that was subsequent to July 10 1972, the date on United  
18 Corporation Exhibit 2? A. Yes it was.

19 Q. Not prior to November 15 you believe?

20 A. Yes.

21 Q. Did you attend the MOA Show in Chicago in 1972?

22 A. Yes I did.

23 Q. Did you or the company that you represented have a display  
24 at that show? A. No we did not.

25 Q. Did you or the company that you represented have a display  
26 in conjunction with that show? A. No I did not.

- 1 Q. Upon your being in Chicago for the show, is that the occasion  
2 on which you delivered the long guns to Bully, do you know?
- 3 A. I believe that the delivery of the long guns to Bully was,  
4 I would say no, that was not the occasion.
- 5 Q. So in the fall of '72 then you made at least one trip to  
6 Chicago? A. Yes I did.
- 7 Q. How many trips did you make to Chicago during 1972 to your  
8 best of your recollection? A. During the whole  
9 1972 I would say four.
- 10 Q. When was the first trip to Chicago in 1972?  
11 A. It was in early spring.
- 12 Q. What was the occasion for that trip? A. As an  
13 employee of Nutting Associates.
- 14 Q. And who did you visit if anyone in the Chicago area at that  
15 time? A. Regine Distributing.
- 16 Q. Was Regine Distributing a distributor for Nutting at that  
17 time? A. Yes they were.
- 18 Q. What was the purpose of your calling on Regine at that time?  
19 A. To teach a field service school.
- 20 Q. Prior to that visit to Regine in 1972 in the spring, had  
21 you ever before been to Chicago on behalf of Nutting?
- 22 A. Yes I did. It was to the MOA Show.
- 23 Q. In 1971? A. Yes.
- 24 Q. Did Nutting have a booth at the 1971 MOA Show?  
25 A. Yes.
- 26 Q. And you also saw other items to deliver on behalf of Nutting?

SOCRATES NICHOLSON  
AND ASSOCIATES

52 SECOND STREET

OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

HA151 312-0116

1 prior to your trip in the spring of 1972? A. No.  
2 Q. Did Nutting have the machine display a Space or display at  
3 the 1971 MOA Show as a part of their booth?  
4 A. Yes they did.  
5 Q. Who else from Nutting was at the MOA Show in 1972?  
6 A. Bill Nutting, David Ralston, Red Guyman.  
7 Q. After your trip to Chicago in the spring of '72, was that the  
8 next occasion of your traveling to Illinois?  
9 A. It was or it might be consulting arrangement with Daily  
10 something.  
11 Q. In the heat of your recollection on that date did you  
12 think long? A. I think it was something  
13 around March or April of that year.  
14 Q. At that time were you no longer in the employ of Nutting?  
15 A. Yes I was no longer.  
16 Q. Did Syzygy Company then exist? A. Yes it did.  
17 Q. You mentioned earlier that you think there was an earlier  
18 corporation called Syzygy Games? A. No, that was  
19 later.  
20 Q. That came later? A. The chronology, just to  
21 give the general context, is Syzygy was formed into a corporation, I think  
22 around the time of the MOA show, and I think the assets of the company  
23 were sold to the parent of Syzygy and converted to Syzygy Games  
24 and at a later time I reacquired the assets of Syzygy per the  
25 agreement for the sale of the company to me, and it was  
26 dependently it was called Syzygy Game Company.

1 Q. I saw. That would have been after June of '72?

2 A. That's correct.

3 Q. As of March of 1972 you and Mr. E. E. E. were partners in

4 Syzygy Company? A. That's correct.

5 Q. And as I understand it there were no other partners at that

6 time? A. That's correct.

7 Q. Did Syzygy have any other employees?

8 A. No they did not.

9 Q. Did it have a manufacturing facility?

10 A. No it did not.

11 Q. Did it have a laboratory or development facility?

12 A. Yes it did.

13 Q. Upon your visit to Chicago in March or April of '72 did

14 you call on at Bally? A. John Britz.

15 Q. Did you meet with anyone else at Bally at that time?

16 A. I don't recollect.

17 Q. Did you meet with any other companies or individuals with

18 respect to Syzygy business at that time?

19 A. I also met with Empire.

20 Q. With whom did you meet at Empire? A. Mr. Kitt.

21 Q. What was the purpose of your meeting in Chicago with Mr.

22 Kitt in March or April of '72? A. We were friends.

23 Q. Was there any business purpose? A. Only the

24 auction to Bally.

25 Q. Did you have a conversation with me during your trip in

26 March or April of 1972? A. Explain your

1 notes

2 Q. Did you have a physical device which operated as a video  
3 machine? A. No I did not.

4 Q. Had you developed a video or is other than the one which  
5 as of March or April 1972? A. Yes I had.

6 Q. Was that the one which was in the car?  
7 A. Yes it was.

8 Q. Did you develop it first or did you develop it with  
9 with a request to the video company or did you develop it  
10 without? A. I developed it without.

11 Q. Did you ever take any other trips to the area of  
12 Daily or Midway or Empire at or during that trip?

13 A. Which trip is that?

14 Q. March or April 1972. A. Yes.

15 Q. What was that business relationship?

16 A. It was conveyed to me in the course of this contract that  
17 is labeled "Exhibit 2". I mean that was the contract  
18 of these photographs.

19 Q. Was that would be similar to small deposition exhibit 2,  
20 the one with the yellow label? A. Yes.

21 Q. Now on your return to the area in 1972 did you see the  
22 Syzygy letterhead which is Britz deposition Exhibit 2?

23 A. Now this was in response to receiving the contract.

24 Q. Did you develop it in response to receiving that? A. Yes.  
25 I developed it in response to receiving that.  
26 A. Yes.

1 you.

2 MR. NICHOLSON: I think your records are a little bit confused  
3 in that Exhibit 1 and 2 contain more documents than just  
4 that particular agreement.

5 MR. NICHOLSON: They point to probably will then. I was  
6 referring to the first two pages.

7 THE COURT: Yes, so you I.

8 MR. NICHOLSON: (C) Then perhaps we can check that by (C) I  
9 merely referring to the 2 exhibits Exhibit 3 which is the  
10 legally agreement with the one you said to be your agreement?

11 A. Yes.

12 Q. If I understand it then at the time in June of '72 or so  
13 with Dr. Baker in London or April of '72 did you believe you had  
14 an understanding with Dally? A. Yes I did.

15 Q. And it was just a matter of reducing it to writing later,  
16 is that correct? A. Right.

17 Q. And as far as you understand it, from Deposition Exhibit 1 to 2  
18 was that reduction to writing? A. That's correct.

19 Q. And the letter of July 10 that you wrote, Dr. Baker's  
20 Exhibit 2, was merely a follow-up on that deposition Exhibit 1.

21 A. Yes.

22 Q. For what purpose? A. Oh I needed several

23 pages that we had agreed on and I had not received. It was  
24 intended that I had been going to use it in describing the

25 project that I was going to give to you at that time, and upon my return

26 to the United States I had been told to call the other side.

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 562-0110



1 THE WITNESS: Is it correct that it is a memorandum for  
2 for the auditors?

3 THE WITNESS: Yes, it was just an internal memorandum to  
4 the auditors like so as to have the ends tied up.

5 Q. Was that memorandum dated 1977 or 1978?  
6 A. I don't know. I don't know the date. I don't know the date.  
7 I don't know the date. I don't know the date. I don't know the date.  
8 I don't know the date. I don't know the date. I don't know the date.  
9 I don't know the date. I don't know the date. I don't know the date.

10 A. Yes they were.

11 Q. And did Nolan Bushnell transfer them to Atari, Inc.?

12 A. Yes they did.

13 Q. Was that true of all of the six payments, do you know?

14 A. Yes.

15 Q. Did Bally ever accept a game that you submitted to them  
16 pursuant to the Royalty Agreement, as a position Exhibit 8?

17 A. Yes they did.

18 Q. What game did they accept or refuse? A. I don't know.  
19 I don't know the game.

20 Q. Did they refuse to sell the Harwood game, do you know?

21 A. Yes they did.

22 Q. Did they refuse to sell the Harwood game to either Bally or  
23 Bally or some subsidiary of Bally.

24 A. Yes they did.

25 Q. Did they refuse to sell the Harwood game to either Bally or  
26 yes.



1 MR. NICHOLSON: Q. Do you know whether it was in fact Bally  
2 that made Astroid or-- A. Bally did not make  
3 Astroid.

4 Q. I gather from what you said that you did make Astroid?

5 A. Yes.

6 Q. So that you did not send any reports with respect to the  
7 you were either shipping or or receiving to the  
8

8 A. That's correct.

9 Q. When Bally accepted and sold it, or did it, or did  
10 the company at any time report to you any sales of  
11 Astroid? A. No.

12 Q. Did Bally or Bally at any time report to you any sales of  
13 or goods which they accepted from you pursuant to Paragraph 2 of  
14 the Letter of the first page of Ross deposition Exhibit 3?

15 A. No.

16 Q. Did you or Astrol call upon Bally or Bally to report with  
17 respect to goods which they accepted and sold pursuant to the  
18 Royalty Agreement, Ross deposition Exhibit 3?

19 A. No.

20 Q. Now I've repeated what I've said and I want to know that you  
21 do not recall that I told you that Astrol did not  
22 call Bally or Bally to report pursuant to Paragraph 2  
23 of the Letter of the first page of Ross deposition Exhibit 3?

24 A. Yes, that's correct. In fact, it is in your report by "Socrates"  
25 in the beginning part of your question?

26 Q. I'm sorry, I'm sorry? I'm sorry or Bally.

1        THIS WITNESS: Yes.

2        MR. NICHOLSON: Now my question is--I guess you better read  
3        the whole question and just think Midway or Bally when I said  
4        "they".

5                                (Pending question read by reporter.)

6        THE WITNESS: The answer is yes, it was Midway.

7        MR. NICHOLSON: Q. So there is a reason that you did not call  
8        upon Midway to protect the protection of a patent which they  
9        accepted and made and sold?                                A. Yes.

10        Q. What is the reason?                                A. I didn't feel that the  
11        patent was concentrated over in excess of the advance and there-  
12        fore I felt that it was unnecessary.

13        Q. And you never asked for an accounting to establish whether  
14        that was true or false?                                A. No I did not.

15        Q. Did you ever discuss with Midway or Bally any patent rights  
16        which you might have on video machines?                                A. Yes.

17        Q. Did you ever discuss granting them any rights under patents  
18        which you might have on video machines?

19        A. Not as part of my current existing contract or obligation.

20        Q. In any other context did you discuss your patent rights  
21        on video machines with Bally or Midway?                                A. Yes.

22        Q. In what context did you discuss those?

23        A. I discussed with them that we did have several patents  
24        pending, and I would like to see if I could be awarded the  
25        patent on those patents. We discussed.

26        Q. When did that discussion occur?                                A. At the time

1 these other discussions were in progress.

2 Q. In early '72, March or April of '72? A. Yes.

3 Q. Did you ever have these subsequent discussions that you

4 reference to that you would have after the patents issued?

5 A. Yes.

6 Q. When did you have that subsequent discussion?

7 A. It was probably March of this year.

8 Q. Were you personally involved in that discussion?

9 A. Yes I was.

10 Q. How many of the other people involved in it? A. Two.

11 Q. With the counsel of Lally?

12 A. With the counsel of Lally.

13 Q. Who was that, do you know? A. I can't remember.

14 Q. Mr. Conlinton? A. Mr. Conlinton.

15 Q. Anyone else at Midway or Lally that was involved in these

16 discussions? A. Yes, Mr. Ross at Midway.

17 Q. Anyone else? A. No.

18 Q. Did this discussion occur in Chicago--

19 A. Yes it did.

20 Q. --at the Chicago office? Did that discussion involve your

21 patent 3,715,417?

22 A. I think I will have to repeat here again. No one

23 going with me to the office of your. Making or negotiating

24 for it, making or selling patents covered by me relating to the

25 various A. I think I should say that I had even had some

26 talk in the past that he had to get beyond the area of

1 I instruct the witness not to answer.

2 MR. HERBERT: Well, as you said just, Mr. Herbert, can get  
3 on information that is an indication of someone else to indicate  
4 and is certainly then this case to the question of whether  
5 that indeed caused to further the various patents and I think  
6 that it is a primary objective and is it to lead to some other  
7 evidence on those issues.

8 Q. Mr. Herbert, are they (one of) Scientific Research  
9 Corporation (which is one of the patents which you all discuss  
10 with Midway or Bally?

11 MR. HERBERT: Go ahead and answer the question.

12 THE WITNESS: Would you rephrase the question?

13 MR. HERBERT: Read it first.

14 (Pending question read by reporter.)

15 THE WITNESS: Yes.

16 MR. HERBERT: Q. What was during the March 1974 meeting  
17 or meeting in Chicago? A. Yes.

18 Q. Did you discuss with Mr. V. Allison or Mr. Ross whether or  
19 was there was any relationship between the Royalty Agreement,  
20 some deposit of Exhibit 3, and rights under your patent, Exhibit  
21 deposition Exhibit 3? A. Yes.

22 Q. Please relate to me that discussion?

23 A. I said that the patent was a separate situation to the  
24 Royalty Agreement.

25 Q. Was the Royalty Agreement, Exhibit 3, ever  
26 been canceled? A. No it has not.

1 Q. Has it ever been notified either in writing or orally?  
2 A. No.  
3 Q. During your meeting in March of '74 or at any time with  
4 to that, did you discuss with anyone at Disney or with  
5 giving the Disney Management, a new Corporation contract by  
6 A. No.  
7 Q. You indicated to me in no time I think I am a stringer or  
8 occasion when you were in Chicago in 1972 and you have  
9 one of them. When was the next occasion when you were in  
10 in 1972? A. I have described I was there  
11 and the PMA Show, I was there to teach a service course. I  
12 there later to discuss this.  
13 Q. And on the occasion when you had long with you?  
14 A. That was a later occasion.  
15 Q. That would be a third trip? A. And I also went  
16 to the MOA Show.  
17 Q. That would be three as I understand it? A. Yes.  
18 Q. To teach the course? A. Teach is one.  
19 Q. Attend the MOA Show? A. No. The MOA was the  
20 last.  
21 Q. And then to teach the course was in March or April  
22 of '74. A. Negotiate the contract.  
23 Q. Negotiate the contract and when was that approximately?  
24 A. It was March or April.  
25 Q. Was there a need to help with the teaching course, or was  
26 that?

1 Q. At the end of 1972 approximately how many employees did  
2 Atari have? A. Probably in the neighborhood  
3 head of 30.

4 Q. Did any of those 30, approximately 30 employees make the  
5 trip to Chicago in 1972? A. No.

6 Q. Approximately how many trips did you make to Chicago in  
7 1973? A. Maybe four.

8 Q. What is the first trip to Chicago that you recall making  
9 during 1973? A. Boy, I really can't re-

10 collect. I believe it was in early summer, late spring.

11 Q. That was the purpose of the first trip that you made  
12 making to Chicago in 1973, or the Chicago area generally?

13 A. I can't recall it.

14 Q. What trip do you recall making to Chicago in 1973 (speci-  
15 fically)? A. MCA Show.

16 Q. Did Atari have a booth at the MCA Show in 1973?

17 A. Yes we did.

18 Q. As of the date of the MCA Show in 1973, approximately how  
19 many employees did Atari have? A. 250.

20 Q. Did other Atari employees attend the MCA Show beyond you?

21 A. Yes.

22 Q. Who in addition to you?

23 A. They were Mr. Leland  
24 Slick, Mr. Leland.

24 Q. Two-hundred-fifty?

25 A. Yes. Mr. Farns,

26 Q. How many?

A. Yes. Mayor.

SOCRATES NICHOLSON

AND ASSOCIATES  
OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

- 1 Q. L-a-n-g-u-a-g-e? A. Right. Alcorn.
- 2 Q. L-a-l-o-o-r-u? A. Yes. Andres.
- 3 Q. L-a-n-g-u-a-g-e? A. Yes. Faraco.
- 4 Q. Will you spell that one? A. F-a-r-a-c-o. I think  
5 what is it.
- 6 Q. What was Mr. Mobilio's position at that time?
- 7 A. President.
- 8 Q. And is he a psychiatrist? A. Yes.
- 9 Q. Mr. Mobilio, what was his position? A. VP market-  
10 ing.
- 11 Q. Mr. Burns? A. I don't know. Mobilio, A.
- 12 Q. Did he report to Mr. Mobilio? A. Yes he did.
- 13 Q. Mr. Burns? A. Engineer.
- 14 Q. To whom did he report? A. To Mr. Alcorn.
- 15 Q. Mr. Meyer? A. Engineer.
- 16 Q. Did he report to Mr. Alcorn? A. Yes.
- 17 Q. Mr. Alcorn? A. Vice president of engineer-  
18 ing.
- 19 Q. Mr. Andres? A. That is Miss Andres. She  
20 is my secretary.
- 21 Q. Mr. Langford? A. Engineer.
- 22 Q. Did you at that time have one booth or two or three  
23 booths?  
24 A. We had three contiguous  
25 booths.
- 26 Q. And did you have an equipment to the 100 in 1970 in the  
way of equipment? A. It had Pong, Space Race,

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND SECRETARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 Pong Doubles, Getcha.

2 Q. Were there more than one of any of these games in the three

3 booths, three contiguous booths of Atari?

4 A. Yes.

5 Q. How many Pong?

6 A. I don't remember.

7 Q. How many in all, approximately?

8 A. I think there were approximately 10.

9 Q. Were they operative games?

10 A. Yes.

11 Q. All of them?

12 A. Yes.

13 Q. Were they operated at the show?

14 A. Yes.

15 Q. Who got to keep the quarters?

16 A. Free.

17 Q. Did you use a coin or just bypass the coin slot or how was it?

18 A. Bypass the coin slot.

19 Q. During 1973 did Atari have any machines in the CIA building

20 at any location other than in the booths at the MOA--

21 A. No.

22 Q. --at any time?

23 A. Would you clarify that question?

24 Q. Would you say that Atari had 10 machines or approximately at the MOA.

25 A. Yes.

26 Q. And how many of them all in the MOA booth of Atari at the MOA?

27 A. Well, a two other machines in a booth.

28 Q. In the Conrad Hilton, was that?

29 A. Yes.

30 Q. What machines were they?

31 A. World Cup.

32 Q. Is that an ever active machine?

33 A. No.

34 Q. What is World Cup just generally?

35 A. It's a ball



1 public (un).

2 Q. What was the other game?

A. Grantrak.

3 Q. Were they operative games?

A. Yes.

4 Q. Were they actually operated during 1973?

A. Yes.

5 Q. Did Atari at any other time in 1973 have a machine at any  
6 location other than the two you have mentioned?

7 A. No.

8 Q. At any time in the history of Atari has it had any machines  
9 in the Chicago area other than at the 100 in your booth space  
10 and in the Conrad Hilton in Chicago that you have mentioned?

11 A. Not machines which Atari has owned.

12 Q. How many would the games did you have in the suite?

13 A. One.

14 Q. How many Grantrak ten games?

A. One.

15 Q. So you had approximately 12 games in Chicago during the  
16 MOA in 1973?

A. Yes.

17 Q. Where did these games come from?

A. Los Games.

18 Q. Were they invoiced to buyers or just kept in the property  
19 of Atari?

A. Just kept on the property

20 of Atari.

21 Q. What was done with the 100 in the 100 or the 100?

22 A. Part of them were on their way to Los Games.

23 Q. How many were shipped to Los Games?

A. I don't

24 know.

25 Q. What became of the rest of them?

A. They were

26 shipped to Atlanta.

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 Q. For what purpose? A. There was another show  
2 down there.

3 Q. Did you at one time work for a Salt Lake City amusement  
4 machine company? A. No.

5 Q. Were you in some way involved with a Salt Lake City amuse-  
6 ment machine company? A. Well, there was a Salt  
7 Lake City amusement park.

8 Q. Is that the name of the entity? A. No. It  
9 Lagoon Corporation.

10 Q. What was your involvement with Lagoon Corporation?  
11 A. I was manager of the games department.

12 Q. Was that while you were in college? A. Yes it  
13 was.

14 Q. Did you have any relationship with Lagoon Corporation  
15 following your college career? A. No, other than,  
16 you know, just being good friends with lots of people.

17 Q. Did Atari, Incorporated have any business relationship with  
18 Lagoon Corporation? A. Yes.

19 Q. What is that relationship? A. We sold an  
20 operation to Lagoon Corporation. Atari machines in operation  
21 which I previously stated and sold that to Lagoon.

22 Q. Were the machines sold as such by Atari, Inc. or  
23 or by some entity which was not  
24 A. Some entity was it?  
25 Lagoon Corporation.

26 Q. When was Merlin Enterprises created? A. The same

1 of 1973.

2 Q. Does it still exist?

A. No it does not.

3 Q. When did it cease to exist?

A. Spring of 1974.

4 Q. Did it operate video machines?

A. Yes.

5 Q. What kind of the video machines? Were they sold to  
6 Lagoon?

A. Yes.

7 Q. Are you familiar with an entity known as West World Amuse-  
8 ments?

A. No I am not.

9 Q. Have you, Mr. Socrates, have any interest in Lagoon Corporation?

10 A. No it does not.

11 Q. Other than the trip to the L.A. Show about which you have  
12 testified, what other specific trips do you recall making to  
13 the Chicago area during 1973?

A. I remember the

14 trip in which we talked about royalty arrangements under the  
15 patent.

16 Q. Now, was that in 1973?

A. Oh excuse me,

17 that was 1974. I'm sorry. I don't really recollect--maybe I  
18 didn't go there four times. I can remember the 1974. Things  
19 were so hectic I don't recollect. Maybe I only went there  
20 once in '73. That seems unlikely but--

21 Q. Do you keep records of your travel?  
22 Be in my calendar.

A. It should

23 Q. Would you check to find out how many trips you made to  
24 the Chicago area during 1973?

A. Sure.

25 Q. Also any other trips of yours, Mr. Socrates, trips to the  
26 Chicago area during this including the trips that you have

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0110

1 mentioned that were at the show but of course excluding the  
2 show which you have already testified about?

3 A. I think Mr. Karna probably made a trip there.

4 Q. More than one trip?

5 A. I would say maximum of  
6 two.

7 Q. And Mr. Karna is national sales manager, is that his title?

8 A. That's correct.

9 Q. Now does Karna, Inc. distribute its products in Chicago  
10 area?

11 A. It sells them to Empire Dis-  
12 tributing.

13 Q. Now is all that to Empire is distributed exclusively in  
14 the Chicago area?

15 A. That is the only people, yes.

16 Q. Is there an agreement between Empire Distributing and Karna--

17 A. No.

18 Q. --either written or oral?

19 A. There is an oral agree-  
20 ment.

21 Q. Approximately when was that oral agreement reached?

22 A. Spring of '72.

23 Q. Were you personally involved in the reaching of that oral  
24 agreement?

25 A. Yes I was.

26 Q. Was that during one of your visits to Chicago?

27 A. No.

28 Q. How was it done?

29 A. On the telephone.

30 Q. With whom at Empire did you reach that oral agreement?

31 A. Mr. Hill.

32 Q. What is the oral agreement as best you understand it?

1 A. We would sell to Empire and no others in that area as long  
2 as, you know, they represented us fairly.

3 Q. Any other aspect of the agreement that you can recall that  
4 you discussed at that time? A. Payment terms would

5 be two percent, ten, net 30, and that they would pay shipment.  
6 The royalties would be 20% of the net.

7 Q. Any other terms or conditions that you can recall?

8 A. No.

9 Q. Did you ever discuss with Mr. Kitt or anyone at Empire  
10 Empire's handling of competitive lines? A. Yes.

11 Q. What was that discussion? A. Oh just something  
12 to the effect that I was hopeful that more Atari games were  
13 being sold than anyone else's.

14 Q. When did that occur? A. Over the phone at  
15 various times.

16 Q. Any other discussions with respect to competitive lines?

17 A. Not to my recollection.

18 Q. Has there ever been a training course for Empire personnel  
19 with respect to Atari games or the type you described you con-  
20 ducted with respect to Hutting? A. Yes.

21 Q. When have they occurred? A. I think there  
22 has been one that was conducted by Mr. Arkus. Excuse me, that  
23 is not true. It was one of the employee technicians of Atari.  
24 I don't remember who.

25 Q. When was that course held? A. Probably in early  
26 fall of '73. Joe Alig.

SOCRATES NICHOLSON  
AND ASSOCIATES

52 SECOND STREET

OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

(415) 362-0110

1 Q. What is his title with Atari? A. He is no longer  
2 with Atari.

3 Q. What was his title when he was there? A. Customer  
4 service.

5 Q. Customer service manager? A. No, just customer  
6 service.

7 Q. Customer service man. For how long was the training course  
8 in England? A. Probably one day.

9 Q. Did Mr. Big take a hour at that kind of service training  
10 course? A. Yes.

11 Q. Was the training course that you referred to in Chicago at  
12 England? A. Yes.

13 Q. Did he teach at any other Midwest locations?  
14 A. I'm sure he did.

15 Q. Do you know any of them? A. Probably, it would be  
16 Omaha, probably Minneapolis. I think the next closest one  
17 would be--I guess we jumped from there over to New York.

18 Q. Did he go to any other Empire installation other than the  
19 one at Chicago, do you know? A. No he did not.

20 Q. I understand they have places of business in other cities.  
21 A. Yes. Can I get a list of them?

22 Q. Certainly. Why don't we take a break and I will look  
23 through those invoices at this time.

24 (Short recess.)

25 Mr. Socrates Nicholson, Jr. called me, March 11, when I told him  
26 that the bank account was not a valid one for the company.

1 a TV monitor. Has Atari used commercial TV receivers in con-  
2 tract to monitors at any time in its manufacture of games or  
3 amusement machines?

4 A. No it has never used a  
5 TV receiver. It has used what was once a TV receiver.

6 Q. Was it purchased by Atari as a TV receiver and modified in  
7 some way?

8 A. Yes.

9 Q. We have gone through the invoices. At the present time we  
10 need to acquire copies or ask you to delete portions. We would  
11 at some future date want one or two of the earliest or latest  
12 but I understand for the moment the easiest procedure is just to give  
13 you one or two questions about them. I notice several of them  
14 relating specifically to the shipment of computers. Are they  
15 sold as such or are they only sold as replacement items, do you  
16 know? I have one here two Peng computers shipped at apparently  
17 no charge, N/C.

18 A. We have a warranty policy  
19 that they are shipped as a computer.

20 Q. Are they a replaceable item in the field, the computer?

21 A. Yes they are.

22 Q. This particular one is Invoice No. 3836 to Empire. Does  
23 Atari from time to time ship computers to Empire in Chicago  
24 for replacement purposes?

25 A. Occasionally.

26 Q. I noticed several relating to connectors. That is a hardware?

A. It's the wiring, the internal wiring of the machine.

Q. Now does Atari ship connectors to Empire as indicated by  
some of these invoices?

A. Occasionally a connector

Q. Now I noticed that some of the invoices at that regard to

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 Q. What promotional activities in general does Atari conduct  
2 with respect to the sale of its video amusement machines?  
3 A. We occasionally advertise.  
4 Q. Where does Atari advertise, in what outlets or--  
5 A. Primarily Cash Box which is a trade rag.  
6 Q. What other promotional activities does Atari--Cash Box is  
7 a nationally distributed magazine, is that so?  
8 A. Yes.  
9 Q. What other means of promotion does Atari employ?  
10 A. The Cash Box.  
11 Q. Any others? A. No.  
12 Q. Has Atari ever shipped a machine to a distributor for a  
13 field test or market test? A. Well, I mean many of  
14 the machines are for market test but we sell them.  
15 Q. Has Atari ever sold a machine for a test where the terms  
16 were in any way different from the ordinary terms that you  
17 testified about earlier? A. No. Occasionally if  
18 we feel that a machine is what we consider to be not a production  
19 run we will have a reduced price on it.  
20 Q. Do you ever permit deferred payment for a market test  
21 machine? A. No, not really.  
22 Q. What are your terms for return of a machine that a distributor  
23 doesn't want to keep? A. Generally there are no  
24 provisions for a return.  
25 Q. And specifically other than the generalization if Empire  
26 took a new machine and decided they didn't think it fitted



1 their market needs, could they return it to you?  
2 A. They could at our discretion.  
3 Q. Has this ever occurred that you know of?  
4 A. We reshipped on occasion.  
5 Q. You have reshipped. What do you mean by that?  
6 A. Well, let's see, it could be a situation where in a place  
7 didn't want the machine they would call us and sometimes we  
8 would actually take it back.  
9 Q. And it has occurred with respect to Empire?  
10 A. On two occasions, yes.  
11 Q. What two occasions, or you recall specifically?  
12 A. There was a situation of a Grantrak machine which it  
13 couldn't get to function properly so rather than, you know,  
14 repair it they decided to return it and we agreed.  
15 Q. Were both of the two occasions you referred to Grantraks?  
16 A. Yes they were. Oh excuse me. There was one other in which  
17 it was a Grantrak that was a real lemon.  
18 Q. But again it was a defective machine?  
19 A. Yes it was.  
20 Q. Did Atari ever receive a return and then for grantraks  
21 other than malfunction? A. No. It's not our policy.  
22 Q. I would like to ask you, in view of the inventory policy of  
23 video equipment and the fact that it is in your professional  
24 opinion? A. I just don't know. I would  
25 like to know.  
26 Q. If I understand you correctly, that is the best you can do

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 such information?

A. Not to my knowledge. If  
2 you find it would you let me know?

3 Q. From your knowledge of the industry, what is the sales  
4 trend in the video amusement machine business?

5 MR. HERBERT: I object to that question. That has nothing  
6 to do with anything in the lawsuit. I instruct the witness  
7 not to answer.

8 MR. ANDERSON: Q. Other than the public instances that  
9 you have already testified about where Atari has placed a  
10 for street operation, have they ever put out a machine or  
11 a machine based upon a return that is a function of the revenue  
12 produced?

A. Not to my recollection  
13 other than those previously mentioned occasions.

14 MR. HERBERT: Perhaps I misunderstood the question. By  
15 return other than you mean being paid as a percentage of the  
16 take of the machine?

17 MR. ANDERSON: Yes or anything other than a fixed price  
18 sale.

19 Q. Is there any instance where Atari has sold a machine on  
20 anything except a set price sale or the instances of street  
21 operations that you have already testified about?

22 A. No.

23 Q. During your meeting in the spring of 1974, with Mr. Teller  
24 and perhaps Mr. Ross, did you discuss the Magnavox patent  
25 position?

A. Yes we did.

26 Q. What was that discussion?

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

(415) 362-0118

1 MR. HERBERT: Objection on this. Again we are getting  
2 beyond the area of venue.

3 MR. ANDERSON: I don't know that that is true and I don't  
4 see how you do unless you know what this discussion was, Mr.  
5 Herbert. We have certainly established a relationship between  
6 Mr. Ross, Mr. Tomlinson, Mr. Anderson and I think we are entitled to  
7 explore it fully.

8 MR. HERBERT: All right.

9 MR. ANDERSON: Q. Will you answer the question please?

10 A. We discussed prior art that I have--which I had, not I have.

11 Q. Prior art with respect to the patent that Magnavox is  
12 asserting? A. Yes.

13 Q. How did that subject of prior art first come up during the  
14 meeting? A. There was a, you know, a ques-

15 tion was asked, what do you think about the Magnavox situation.

16 Q. Someone asked that of you? A. Yes.

17 Q. Was that Mr. Tomlinson, do you recall?

18 A. No. I think it was Mr. Ross.

19 Q. What was your response?

20 MR. HERBERT: Objection. Now I do instruct the witness  
21 not to answer. This has nothing to do with venue, it only has  
22 to do with validity and possible scope of the patent.

23 MR. ANDERSON: Q. What prior art did you refer to in that  
24 conversation?

25 MR. HERBERT: Objection, same reason, instruct the witness  
26 not to answer for the same reasons.

1 MR. ANDERSON: Q. What other aspects of the Magnavox  
2 situation were discussed during that meeting other than your  
3 discussion with them of prior art that you had?

4 A. The question was raised if anyone felt that Magnavox was  
5 going to sue.

6 Q. At the time of your meeting was there not a lawsuit pending?

7 A. No there was not.

8 Q. Was there any discussion of any of the Bally companies  
9 indemnifying or holding Atari harmless in any way in the event  
10 of a lawsuit? A. No.

11 Q. Was there any discussion of the possibility of Atari holding  
12 any of the Bally companies harmless or indemnifying them in  
13 the event of a lawsuit? A. I would like to confer

14 for a second.

15 (Short recess.)

16 THE WITNESS: Would you restate the question?

17 MR. ANDERSON: Would you read the question please?

18 (Pending question read by reporter.)

19 THE WITNESS: There was a discussion of a future further  
20 agreement to which one of the provisions that was being discussed  
21 was a provision of indemnification.

22 MR. ANDERSON: Q. Was this a further agreement between  
23 Atari and one of the Bally companies?

24 A. There was no further agreement.

25 Q. I mean was there discussion with respect to a possible  
26 future agreement?

1 Q. That is what you are referring to in your last answer?

2 A. Yes.

3 Q. With which Bally company was that being discussed or with  
4 respect to which? A. It was with Mr. Tomlinson.

5 Q. And was he speaking then for Midway or Bally or Empire or  
6 do you know? A. I don't know.

7 Q. Did he distinguish between those various companies during  
8 your discussion? A. I don't recollect.

9 Q. Do you know who he was representing during the discussion?  
10 Was it Midway or somebody else? A. I don't know.

11 Q. What was the discussion with respect to indemnification  
12 in the event of a future agreement?

13 MR. HERBERT: I am going to object to this. Again this  
14 witness has already testified there has been no agreement for  
15 indemnification and as far as the discussion as to what the  
16 future might be, I think that is pretty far afield again from  
17 the area with which we are concerned here so I instruct the  
18 witness not to answer.

19 MR. ANDERSON: I think the record in this deposition and  
20 prior ones show a rather close relationship between these  
21 companies and I think we are entitled to explore it.

22 MR. HERBERT: Between these companies?

23 MR. ANDERSON: Between Midway, Bally, Atari and Empire.

24 MR. HERBERT: Maybe I misunderstood your question but I  
25 think Mr. Bushnell already indicated he didn't know which of  
26 those companies the other party was representing and I may have

1 misunderstood your question.

2 MR. ANDERSON: Your summary is exactly in accord with mine  
3 and my question is what was discussed between Mr. Tomlinson  
4 and Mr. Reas and Mr. Bushnell at the meeting in the spring of  
5 1974 with respect to possible indemnification regarding the  
6 Magnavox patent claims and I would like you to answer that as  
7 best you can, Mr. Bushnell.

8 THE WITNESS: Well, it was primarily geared around, you  
9 know, the discussion of some of the prior art which I had and  
10 that I felt that Atari would, you know, as a part of a Royalty  
11 Agreement take on that burden.

12 MR. ANDERSON: Q. Now what burden is that?

13 A. In the event of a possible Magnavox patent infringement  
14 suit.

15 Q. And the burden would be that, that Atari would defend the  
16 suit? A. Yes.

17 Q. Have there been any further discussions since the meeting  
18 between Mr. Tomlinson, Reas and you regarding this subject  
19 matter? A. No.

20 Q. Either telephone or personal? A. No.

21 Q. Have you discussed this subject matter with anyone, any  
22 of the Bally companies since that meeting in Chicago?

23 A. No I haven't.

24 Q. Did you ever discuss that subject matter with anyone in  
25 any of the Bally companies prior to the meeting in Chicago  
26 with Mr. Tomlinson and Reas in March or April of this year?

1 A. I had mentioned on the telephone that I had a situation  
2 which I felt would be of interest to them and it included the  
3 indemnification provision.

4 Q. When was that conversation? A. It was probably  
5 a week prior to my visit.

6 Q. And the proposal that you thought might be of interest to  
7 them included Atari's assumption of responsibility for defending  
8 claims by Magnavox, is that correct? A. Yes.

9 Q. Did it also involve a license under Atari patent rights?

10 A. Yes.

11 Q. Did it involve any exchange of information?

12 A. No it didn't.

13 Q. Or any engineering help of any kind?

14 A. Strictly a license under our patent.

15 Q. Prior to that telephone conversation had you ever discussed  
16 with anyone associated with any of the Holly companies the  
17 Magnavox patent rights and claims? A. I was aware of

18 it. We had discussed the existence of the Magnavox patents.  
19 That was about the extent of it.

20 Q. Have you had any discussions with any other manufacturers  
21 of video cassette machines with respect to the Magnavox patent  
22 position? A. Yes I have.

23 Q. With whom? A. Oh I think a fellow, Gary

24 [Name redacted] from [Name redacted].

25 Q. G-a-r-y? A. Yes.

26 Q. S-t-e-r-n? A. Yes.

1 Q. Who else? A. Gene Lipkin from Allied  
2 Leisure.

3 Q. Who else? A. That is about it.

4 Q. On how many occasions have you discussed the Magnavox  
5 patent position with Gary Stern? A. I think I can  
6 only think of one phone call.

7 Q. When was that approximately? A. I really don't  
8 know. It was prior to being served.

9 Q. Was it this year? A. I don't believe so.

10 Q. Who initiated the phone call? A. He did.

11 Q. Was it to inquire electrically about the Magnavox patent  
12 position? A. Yes I believe it was.

13 Q. Approximately how long did the phone call last?

14 A. Five, ten minutes.

15 Q. Relate as best you can what he said to you and what you  
16 said to him?

17 MR. HERBERT: Objection again. It's still way beyond  
18 venue. It has nothing to do with this whole lawsuit. You are  
19 going far beyond. I instruct the witness not to answer.

20 MR. ANDERSON: Q. Will you answer?

21 A. No I will not.

22 Q. On how many occasions did you discuss the Magnavox patent  
23 position with Gene Lipkin? A. One.

24 MR. HERBERT: Objection.

25 MR. ANDERSON: Q. On one occasion, is that right?

26 A. I will not answer.



1 Q. Mr. Herbert has not instructed you not to answer, he has  
2 merely instructed an objection.

3 MR. HERBERT: The answer is already in the record so I  
4 will let it stand.

5 Q. Approximately, the time that the discussion with Mr. Lighter  
6 was held?

7 MR. HERBERT: Objection again and instruct the witness not  
8 to answer.

9 Q. I think that the discussion was about  
10 the Atari involvement in Chicago.

11 MR. HERBERT: Not as you have made the questions insofar as  
12 what did you discuss about the Magnavox patent position, it's  
13 too broad.

14 MR. ANDERSON: It's the only way you can get the specific  
15 questions to establish a foundation, it's fundamental. If I  
16 did it any other way you would have a valid objection.

17 Q. Approximately when was that the discussion with Mr. Lighter?

18 MR. HERBERT: Answer that question.

19 THE WITNESS: I think that was probably in the summer of  
20 '73.

21 MR. ANDERSON: Q. Was that a telephone conversation?

22 A. Yes it was.

23 Q. Who initiated the call? A. I don't recollect.

24 Q. Approximately how long did it last? A. 10 minutes.

25 MR. HERBERT:

26 Q. Was it initiated specifically with respect to the Magnavox

1 patent position? A. No it wasn't.

2 Q. Have you ever had any business relationship with any of the

3 manufacturers of video amusement machines other than the ones

4 you have already testified about? A. In terms of

5 sales --

6 Q. Sales, engineering help, agreements of any kind with Allied

7 Leisure? A. No.

8 Q. With Chicago Dynamic? A. No.

9 Q. With Seeborg? A. No.

10 Q. With Ramtek? A. No.

11 Q. Are you familiar with Universal Research Laboratories?

12 A. Yes.

13 Q. Have you ever had any business dealings of any kind with

14 Universal Research Laboratories? A. No.

15 Q. Do you know whether Universal Research Laboratories is in

16 the video amusement machine business in any way?

17 A. I don't know of any of their dealings. All I know is what

18 I have heard.

19 Q. Has Atari at any time granted any rights to anyone other

20 than one of the fully computerized video amusement machines you have

21 already discovered to make or sell video amusement machines?

22 A. Not as far as our computers. We are the sole manufacturer

23 of our computers.

24 Q. Do you sell your computers to others for incorporation

25 into video amusement machines? A. Yes.

26 Q. To whom? A. Various companies.

1 Q. Approximately how many companies have you sold your computer  
2 to for incorporation into their own video amusement machines?

3 A. Probably four.

4 Q. What are the names of those companies?

5 A. Atari U.K. No relation as a company, they just use our  
6 name. Secoburg, Inc.

7 Q. Is that a South American company or Mexican?

8 A. No, French.

9 Q. To whom else have you sold? A. Segasa.

10 Q. Where is Segasa located? A. Spain.

11 Q. Do I give evidence in any way as to Secoburg, do you know?

12 A. I believe that it is.

13 Q. Do you know how? A. I think Secoburg owns  
14 a percentage of them although I am not sure of what that is.

15 Q. And to whom else has Atari sold its computers for incor-  
16 poration into machines? A. Hunter Electronics,

17 PTC, LTD, Australia.

18 Q. Do you restrict in any way the places in which these four  
19 companies can resell their complete machines?

20 A. No.

21 Q. Do you know whether any of them do resell them in the United  
22 States or for shipment to the United States?

23 A. None to my knowledge.

24 Q. You gave me a list of machines at the beginning of the  
25 deposition and I will lay before you my list. Is that a  
26 complete list of the games which Atari, Inc. now has in their

SOCRATES NICHOLSON

AND ASSOCIATES

OFFICIAL REPORTERS AND NOTARIES

SAN FRANCISCO 94105

52 SECOND STREET

415/362-0112

1 line?

A. There is one more and I don't  
2 know what it is. No. Yes that is a complete list.

3 Q. Do you know Joseph Robbins?

A. Yes I do.

4 Q. Have you met with him personally?

A. Yes I have.

5 Q. In Chicago?

A. Yes.

6 Q. When did you meet him?

A. He visited my factory at one  
7 time.

8 Q. Have you met with him on each occasion of your traveling  
9 to Chicago do you know? A. No I haven't.

10 Q. Approximately on how many occasions have you met with him  
11 in Chicago? A. Oh probably three or four.

12 Q. Do you know Mr. Wolverton?

A. Yes I do.

13 Q. Have you met with him personally?

A. Yes.

14 Q. On what occasions?

A. On visits to Midway.  
15 I think I met him twice.

16 Q. He is the president of Midway, is that correct?

17 A. Yes.

18 Q. Were these occasions other than the ones that you have  
19 already testified about or--

A. No. They were  
20 in conjunction with those previous meetings.

21 Q. Have you met Mr. David Braun?

A. Yes I have.

22 Q. On what occasions, if you recall?

23 A. At the HOA Show.

24 Q. And he is an officer of Allied Leisure, am I correct?

25 A. That's correct.

26 Q. At what other shows have you shown video amusement machines

SOCRATES NICHOLSON

52 SECOND STREET

AND ASSOCIATES  
OFFICIAL REPORTERS AND NOTARIES  
SAN FRANCISCO 94105

(415) 382 0116

1 other than MOA and I think you said one in Atlanta?

2 A. I don't.

3 Q. What does that stand for? A. International Associ-

4 ation of Manufacturers.

5 Q. Is that the show that is in Atlanta? A. Yes.

6 Q. Have you ever shown at any others?

7 A. Oh, there have been some in all regions I suppose. But I don't  
8 can really call them shows or not is hard to say.

9 Q. Any in the Midwest? A. I think there was one  
10 in Chicago.

11 Q. Any others that you can recall? A. No.

12 Q. Was that in 1973 in Omaha? A. Yes.

13 Q. Have you shown in the Atlanta MOA or more than one occa-  
14 sion? A. No.

15 Q. That was in 1973 also? A. That's correct.

16 Q. When did you first learn of the video game that ultimately  
17 became known as Odyssey of Magnavox?

18 MR. HANLEY: Objection. That has nothing to do with  
19 the video game either. I suggest the witness not to answer.

20 MR. ANDERSON: Q. What initiated the original discussion  
21 between you and Magnavox with respect to video games? Did you  
22 initiate it or did he? A. In the early conversation

23 A. I initiated it.

24 Q. Did you approach as a person to the idea that you approached  
25 the Bally companies or were they the only company that you  
26 approached in the manner indicated by the exhibits that already

1 are of record? A. Nutting Associates--I don't  
2 know whether I approached them but upon leaving Nutting  
3 Associates I agreed to complete a prototype game for them.

4 Q. Is anyone else other than you involved in the design or  
5 engineering of the computers for Atari?

6 A. Yes.

7 Q. Anyone outside of Atari? In other words, not an employee  
8 of Atari.

A. No.

9 Q. Has Atari ever made an attachment for a TV receiver in the  
10 nature of Odyssey?

A. What do you mean?

11 Q. In other words, something that could be attached to a home  
12 TV receiver.

A. As a product?

13 Q. As a product or proposed product?

14 A. No it hasn't.

15 Q. Has it done any work on that product line or potential  
16 product line?

17 MR. WELSH: I'm wondering how that is relevant as to  
18 potential product line. I will object to that. I would like  
19 to request you to speed up if you could. I am right at the  
20 door and no go.

21 THE WITNESS: Atari has the capability of doing that if it  
22 wishes to.

23 MR. ANDERSON: I will try to cut it short.

24 Q. Has it done it? You say it has the capability. Has Atari  
25 done any work?

A. On the consumer product?

26 Q. Yes.

A. Yes it has.

1 Q. Has it ever sold a product for the consumer market?

2 A. Well, we have had people who are nonprofessionals buy our  
3 coin operated pieces but that is the extent of it.

4 Q. Has Atari ever sold the computer part apart from a TV  
5 receiver or monitor other than to the four customers you named  
6 for incorporation by the customer with a TV receiver?

7 A. Not to my knowledge. I think there were some small  
8 companies in South America.

9 (Short recess.)

10 MR. ANDERSON: I have just one or two further questions.

11 Q. Is Mr. Wakefield still with Atari?

12 A. No he is not.

13 Q. When did he terminate? A. Three weeks ago. We  
14 had a significant reduction in personnel.

15 MR. ANDERSON: I will have the reporter mark as Bushnell  
16 deposition Exhibit 4 a copy of the affidavit of John C. Wake-  
17 field.

18 (Copy of affidavit of John  
19 C. Wakefield marked Bushnell  
20 deposition Exhibit No. 4 for  
identification.)

21 MR. ANDERSON: Q. Mr. Bushnell, are you familiar with  
22 Bushnell deposition Exhibit 4? A. Yes I am.

23 Q. Has Atari, Inc. at any time during its existence had a  
24 telephone in the northern district of Illinois?

25 A. No it hasn't.

26 Q. Or a representative located there? A. No.

1 Q. Has it ever had a business location there of any kind?

2 A. None whatsoever.

3 Q. Has Atari, Inc. ever accepted trade-ins of machines that  
4 it previously sold?

A. Never.

5 Q. Has it ever purchased back a machine that it sold other  
6 than the one that I think you mentioned earlier that was  
7 defective?

A. No it has not.

8 Q. Does Atari have any licensees other than the relationship  
9 to Nutting that you mentioned under Bushnell deposition Exhibit  
10 3?

A. There is no agreement between  
11 Nutting and Bushnell on this agreement.

12 Q. I think you said there was some relationship that was  
13 terminated.

A. We had an agreement but  
14 it had nothing to do with our patent.

15 Q. Does Atari have any licensees under Bushnell Exhibit 3?

16 A. No.

17 Q. When did Atari first become aware of the patents under which  
18 Magnavox makes its claims?

A. Vaguely or detailed?

19 Q. Well, vaguely.

A. It was probably  
20 middle--I would say 1972, middle of '72.

21 Q. How did Atari gain that awareness?

A. There was some mention of the existence of such patents  
22 from Bally Corporation.

23 Q. Was that during a meeting?

A. Yes.

24 Q. In Chicago?

A. Yes.

25 Q. Was that the meeting when you entered into this agreement?



1 A. When we negotiated it.

2 Q. When you negotiated it. Has Atari, Inc. ever indemnified  
3 any customer against infringement of the patents under which  
4 Magnavox makes its claims? A. No it has not.

5 Q. When did Atari gain more specific knowledge of the Magnavox  
6 patents, more specific knowledge than your vague information  
7 in the summer of '72? A. It was probably--I  
8 went home and I think I applied for a copy of those patents  
9 and I think it was two or three months thereafter.

10 Q. Did Bally give you the patent numbers during the meeting?

11 A. I don't recollect.

12 Q. How did you apply for copies of them or request them?

13 A. I must have had patent numbers. My secretary--I just said  
14 that I understand there is a Magnavox patent and she as good  
15 little secretaries do came up with the goods.

16 MR. ANDERSON: We have no further questions.

17 MR. WELSH: I have no cross-examination.

18 MR. ANDERSON: I would suggest we agree that Mr. Bushnell  
19 can sign the deposition before any notary public.

20 MR. HERBERT: So stipulated.

21 (Whereupon, the taking of the deposition was  
22 concluded.)  
23  
24  
25  
26

(Signature of Witness)

(Date of Signature)